

## AFTERNOON SESSION.

The Senate met pursuant to adjournment.

Lieutenant-Governor Browning in the chair.

Roll called.

Quorum present, the following Senators answering to their names:

Atlee.	Miller.
Burns.	Morriss.
Goss.	Neal.
Gough.	Patterson.
Greer.	Potter.
Grinnan.	Sebastian.
James.	Terrell.
Johnson.	Turney.
Kerr.	Wayland.
Lloyd.	Yantis.
McGee.	Yett.

Absent.

Davidson.	Odell.
Dibrell.	Ross.
Hanger.	Stafford.
Linn.	Stone.

Absent—Excused.

Lewis.

## BILL SIGNED.

The Chair gave notice of signing, and did sign, in the presence of the Senate, after its caption had been read,

House bill No. 3, A bill entitled "An Act making an appropriation to defray the contingent expenses of the First Called Session of the Twenty-sixth Legislature of the State of Texas, convened January 23, 1900, by proclamation of the Governor."

## RESOLUTIONS.

By Senator Kerr:

Resolved by the Senate, That each member of the Senate be allowed to subscribe for three daily newspapers during the session of the Legislature, and that the same be paid for out of the contingent fund of the Senate, at a price not to exceed three cents per copy.

Adopted.

By Senator Miller:

Resolved, That the Secretary of the Senate be allowed five dollars worth of stamps, to be paid out of the contingent expense fund.

Adopted.

On motion of Senator Kerr, the Senate adjourned until Monday next, 10 a. m.

## FOURTH DAY.

Senate Chamber,  
Austin, Tex., Monday, Jan. 29, 1900.

The Senate met pursuant to adjournment.

President Pro Tem. Turney in the chair.

Roll called. Quorum present, the following Senators answering to their names:

Atlee.	Morriss.
Burns.	Odell.
Dibrell.	Patterson.
Goss.	Potter.
Gough.	Sebastian.
Grinnan.	Stafford.
Hanger.	Terrell.
James.	Turney.
Kerr.	Wayland.
Lewis.	Yantis.
Miller.	Yett.

Absent.

Davidson.	McGee.
Greer.	Neal.
Johnson.	Ross.
Linn.	Stone.
Lloyd.	

Prayer by the Chaplain, Rev. Garrett.  
Pending the reading of the Journal of last Thursday,

On motion of Senator Patterson, the same was dispensed with.

## EXCUSED.

On motion of Senator James, Lieutenant-Governor Browning was excused from attendance upon the Senate until Thursday, on account of important business.

On motion of Senator Stafford, Senator Hanger was excused for non-attendance upon the Senate last week, on account of important business.

## PETITIONS AND MEMORIALS.

By Senator Potter:

Petition of citizens of Cook county in reference to tax upon mutual building and loan associations.

Read, and referred to Committee on Finance.

## COMMITTEE REPORTS.

Committee Room,  
Austin, Texas, January 29, 1900.

*Hon. J. N. Browning, President of the Senate.*

SIR: Your Committee on Public Land and Land Office to whom was referred

Senate bill No. 2, being a bill to be entitled "An Act to partition the land,

adjust and settle the controversy between the public school fund and the State of Texas growing out of the joint ownership of the public domain under the provision of the Constitution of 1876; to provide for the payment of the sum due said school fund, and for the issuance of patents and for other purposes."

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that the attached Committee Substitute bill *do pass* in lieu of the original bill, and we also submit the following attached remarks:

#### REMARKS.

Under the report of the Commissioner of the General Land Office, and the special Commission appointed under the Act of the Twenty-sixth Legislature to determine the state of the accounts between the State of Texas and the permanent school fund growing out of their joint landed interest, it is clear that the lands appropriated in this bill, together with the monied appropriation, fully compensates the school fund for all lands belonging to it under the provisions of Section 2, Article 7 of the Constitution; provided that there should be deducted from the public domain, at the time of the adoption of the Constitution of 1876, the three million acres of land set aside therein for building a new State capitol, and the one million acres granted thereby to the State University, before dividing such domain with the permanent school fund.

Section 2, Article 2 of the Constitution of 1876, in enumerating the items that shall constitute the permanent school fund says: "One-half of the public domain of the State."

The same article of the Constitution, in Section 15, provides: "In addition to the lands heretofore granted to the University of Texas, there is hereby *set apart and appropriated*, etc.—for the University and its branches, one million acres of the unappropriated public domain."

Section 57, Article 16 of the same Constitution provides—"three million acres of the public domain are hereby *appropriated and set apart* for the purpose of erecting a new capitol, etc."

The different wording in these different sections may mean a great deal. It is provided in the two last sections, that there is hereby *set apart and appropriated* so much land, etc., while in the section concerning the school fund it is only stated that it shall consist, among other things, of one-half of the public domain. If neither former Legislatures, nor the

courts of this State had given construction to these provisions, we might be in serious doubt as to whether or not the capitol lands and the University lands should be first deducted from the public domain before dividing with the school fund, though we are inclined to believe that the words, "hereby appropriated and set apart," in the case of the capitol lands and the University lands, was intended to provide that they should first be deducted from the public domain before either the school fund or any other fund should obtain anything. But whether this be the case or not, it seems that all former Legislatures, from the time of the adoption of the Constitution of 1876 to the present time, with possibly one exception, have given this construction to these provisions.

The Act of 1879 that set aside the capitol lands did not provide for the survey or location of alternate sections, or any public domain for the benefit of the school fund, which it should have done if the Legislature believed that the school fund was entitled to one-half of the public domain, regardless of these other constitutional appropriations; but it was provided by the Legislature of 1879 that fifty thousand acres of the public domain should be granted to pay for the surveying of the three million acres appropriated by the Constitution to the building of a new capitol, and that one-half of the proceeds of that fifty thousand acres should be set aside to the school fund, thereby clearly showing the difference in the opinion of the Legislature between the rights of the school fund in the lands appropriated by the Legislature and those appropriated by the Constitution, viz: That in the first instance the school fund was entitled to one-half of any grant made; and in the latter instance, that the grant should be taken regardless of the rights of the school fund to the same.

As above indicated, this seems to have been the legislative construction of every session of the Legislature from 1876 to the present time, unless it be in the pre-emption Act of 1879, where no provision seems to have been made for alternate sections for the school fund, or for the payment of one-half of the proceeds of the sale of such lands into the school fund.

From the best information that we can get, from talking with members of the Legislature of 1879, and examining all records at our command, it seems there has never been any doubt about the fact, that the University lands and the capitol lands should be first taken from the public domain before the division

should be made with the school fund. But aside from any legislative construction or construction from the mere language of the instrument, the Supreme Court of the State of Texas has more than once, either directly or incidentally, had the question before it and seems to have given the same construction as here given by us:

First. In the case of *Day Co. vs The State*, in the 68 Texas, at page 548, Chief Justice Stayton, speaking for the court in reference to the constitutional appropriation, and the meaning of the words "public domain," used this language: "The words 'public domain,' as here used, meant simply that one-half of the public domain, then appropriated to some use by the *Constitution*, or some precedent obligation, should be so appropriated."

We can not here quote fully from these decisions, but this was said in reference to the grant made in the Constitution to the permanent school fund.

Second. In the case of the *G., H. & S. A. Ry. Co. vs. The State*, 77 Texas, at page 384, Judge Henry, speaking for the majority of the court, after quoting all the constitutional provisions in regard to the appropriation of land, as well as all former Acts of the Legislature on the subject, emphatically declares that among other things the grants of public domain made by the Constitution to other purposes than the school fund, should first be taken from the public domain before it should be divided between the State and the permanent school fund. And while he contends that even other obligations should also be deducted, his reasoning as to the constitutional provisions seems satisfactory; besides, it appears to have been conceded by the State from his statement of the case, that the constitutional appropriations were properly deducted from the public domain before dividing with the school fund.

The Attorney-General in his able argument for a rehearing in that case criticized severely the opinion of the court on other points, but does not seem to question seriously the correctness of the opinion as to the other constitutional landed appropriations. (See page 394 of the case above cited.)

Judge Stayton in rendering his dissenting opinion in that case, from page 418 to 438, discussed the different provisions of the Constitution, as well as those of all Acts of the Legislature akin to the subject. He concludes, and so states, that in the proper partition of the public domain that there should be deducted from the same (at the time of the adoption of the Constitution), the three million acres for the capitol and

the one million acres for the University, and proceeds to show how much would remain to be divided between the State and school fund, after making such deduction.

It has been said that the question here involved was not directly before the Supreme Court in the case last cited. This may be true; but it is certainly also true that each of the judges who wrote upon the subject discussed this very question, and between them on that point there was no disagreement.

Third. In the latter case of *Hogue vs. Baker*, 92 Texas, at page 63, the present Supreme Court determines that the clause of the Constitution setting aside one-half of the public domain to the school fund was self-acting, and to that extent criticized the case of the *Railway Co. vs. The State*, in the 77 Texas, above cited; but it is clear if that provision was self-acting, much more so were the two provisions heretofore quoted, whereby it was declared that there is hereby *'set apart and appropriated'*; certain lands for the University and for building the capitol.

In the *Hogue* case the Supreme Court declined to pass upon the question as to whether or not these constitutional landed appropriations, other than to the school fund, should first be taken before the division is made with the school fund. But this does not interfere with the former decisions of the court on that question.

If this view is not adopted, then the homesteader and other parties settling upon the public domain, and who have received patents to their lands, must be disturbed and the lands taken away from them, and given to the school fund to compensate it, or the State of Texas must saddle upon herself a very large debt in order to compensate the school fund for the one-half of the lands used in building the capitol and for one-half of those used to endow the University.

Certainly any construction that would bring about such serious results to the State of Texas and to the titles of our people to their homes should not be contended for, unless it is required by the plain language or intent of the Constitution; and, as seen above, both the legislative construction and the construction of the courts has always been in accordance with the view suggested in this report, and certainly these long expressed views of the matter should be sustained where it is not clear that the school fund is entitled to any part of these lands.

This bill not only sets aside to the school fund all the public domain now

held by the State, but goes further and grants to such fund, all lands hereafter recovered by the State, and we have reason to believe that many thousands of acres can be and should be recovered from speculators and corporations, who have illegally acquired the same. In no event can the school fund be hurt by the Legislature adopting the views suggested in this report; but, upon the contrary, it is quite probable she will be greatly benefited by the provisions of the bill. We therefore recommend that the bill do pass.

POTTER, Chairman.

C. S. for S. B. No. 2.] [By Committee.

# A BILL

## TO BE ENTITLED

AN ACT to define the permanent school fund of the State of Texas, to partition the public lands between said fund and the State, and to adjust the account between said fund and said State; to set apart and appropriate to said school fund, in part payment of said account, the residue of the public domain of said State, to which the said fund is entitled under Section 2, Article 7, of the Constitution, adopted April 17, 1876; to appropriate the sum of twenty-nine thousand, three hundred and forty, and twenty-seven one-hundredths dollars to the permanent school fund from the general revenue not otherwise appropriated, in full payment of the balance due to said fund by the State of Texas, under the Constitution of 1876; to provide for the survey, purchase and lease of said land, and the issuance of patents in certain cases; and providing for suit in Travis county against any person claiming any of the lands belonging to the school fund or any other funds.

Whereas, By authority of an Act to adjust and define the rights of the Texas & Pacific Railway Company within the State of Texas, passed May 2, 1873, there was set aside and segregated from the public domain what is commonly called and known as the Texas & Pacific Railway Reservation; and

Whereas, By authority of an Act to amendments thereto provided that for every section or part of section surveyed for said railway company or for any other purpose a like quantity should be surveyed and set apart for the benefit of the permanent school fund, and that one-half of the proceeds arising from the sale of all lands in said reservation should be paid to the permanent school fund; and

Whereas, At the adoption of the Constitution of 1876 there was thirteen million, six hundred and seventy-four thousand, four hundred and forty-eight and ninety one-hundredths acres remaining unsurveyed or otherwise unappropriated, and of which the permanent school fund was entitled to six million, eight hundred and thirty-seven thousand, two hundred and twenty-four and forty-nine one-hundredths acres; and

Whereas, At the time the Constitution of 1876 was adopted there were forty-one million, eight hundred and sixty-one thousand, one hundred and thirty-two and sixty six one hundredths acres of public domain, and of which, under Section 2, Article 7, of said Constitution, said school fund was entitled to twenty million, nine hundred and thirty thousand, five hundred and sixty-six and thirty-three one-hundredths acres, which, together with one-half of the Texas & Pacific Railway Reservation, amounts in the aggregate to twenty-seven million, seven hundred and sixty-seven thousand, seven hundred and ninety and seventy-eight one-hundredths acres; and

Whereas, There were surveyed for and set apart to said fund, together with the proceeds arising from the sale of land within the Texas & Pacific Railway Reservation four million, nine hundred and forty-three thousand, two hundred and six and twenty one-hundredths acres; and

Whereas, There were surveyed for and set apart to said fund, together with the proceeds arising from the sale of land from the unappropriated public domain of the State, sixteen million, nine hundred and twenty-two thousand, five hundred and seven and ninety one-hundredths acres; and

Whereas, By an Act of the Twenty-sixth Legislature, approved April 18, 1899, there was set apart and appropriated to said fund all lands heretofore recovered from railway companies, other persons, firms or corporations, amounting in the aggregate to one million, four hundred and twenty-eight thousand, five hundred and forty-one and forty one-hundredths acres, which were transferred in part payment to the indebtedness of the State to the permanent school fund, making a grand total of twenty-three million, two hundred and ninety-four thousand, two hundred and fifty-five and thirty-one one-hundredths acres, against twenty-seven million, seven hundred and sixty-seven thousand, seven hundred and ninety and seventy-eight one-hundredths acres to which it is entitled, or a deficiency of four million, four hundred and seventy-three thousand, five

hundred and thirty-five and twenty-seven one-hundredths acres; and

Whereas, There are within the Texas & Pacific Railway Reservation remaining unsurveyed and unappropriated three million, two hundred and seventy-five thousand, six hundred and twenty-eight acres, and there are unsurveyed and unappropriated one million, one hundred and sixty-eight thousand, five hundred and sixty-seven acres of public domain in the State of Texas, exclusive of lakes, bays and islands on the Gulf of Mexico, amounting in the aggregate to four million, four hundred and forty-four thousand, one hundred and ninety-five acres, which is twenty-nine thousand, three hundred and forty and twenty-seven one-hundredths acres less than is due by the State to the permanent school fund (including lands sold under pre-emption Act of 1879), after setting apart and appropriating to said four million, four hundred and forty-four thousand, one hundred and ninety-five acres of unsurveyed and unappropriated land; and

Whereas, The average value of said land is one dollar per acre; and,

Whereas, Until the account between the State of Texas and the permanent school fund is adjusted, a cloud rests upon a great number of land titles in this State; and,

Whereas, It is necessary that there should be a complete and final adjustment and partition between the State and said school fund, and to the further end that the cloud now resting on the land titles of Texas be removed; therefore,

Be it enacted by the Legislature of the State of Texas:

Section 1. For the purpose of adjusting and finally settling the controversy between the permanent school fund and the State of Texas, growing out of the division of the public domain, there is hereby set apart and granted to said school fund four million, four hundred and forty-four thousand, one hundred and ninety-five acres, or all the unappropriated public domain remaining in the State of Texas of whatever character, and wheresoever located, including any lands hereafter recovered by the State, except that included in lakes, bays and islands along the Gulf of Mexico, within tide water limits, whether the same be more or less than said four million, four hundred and forty-four thousand, one hundred and ninety-five acres.

Sec. 2. In payment of any balance due said school fund, after the granting of the land provided in Section 1 of this Act, there is hereby granted and appro-

riated the sum of twenty-nine thousand, three hundred and forty and twenty-seven one-hundredths (29,340.27) dollars, out of any money in the State treasury, not otherwise appropriated, to pay said school fund, and the Comptroller is authorized and required to draw a warrant for said amount on the general fund, payable to the school fund, in full and final payment of any balance due said fund from the State of Texas, and the Treasurer shall upon receipt of such warrant transfer said amount to said school fund.

Sec. 3. All lands set apart and appropriated to the school fund by this Act shall immediately become a part of the permanent school fund, and the Commissioner of the General Land Office shall have surveyed, classified and sectionized (where such action is necessary), any part or all of said lands, and the same are hereby placed upon the market for sale, or lease, under existing laws; provided, that in case of purchase or lease said Commissioner shall give a preference right to any actual settler on, or lessee of said lands, or any section, or part of any section thereof, who has settled upon, had surveyed, or made permanent improvements thereon prior to the passage of this Act, or leased the same from the State of Texas at any time prior to the passage of this Act, and who now hold under valid lease or leases.

Sec. 4. The Commissioner of the General Land Office is hereby directed to issue patents to all homestead claimants, pre-emptors and other persons who settled upon said lands or purchased the same, and had the field notes thereto returned to, and actually filed in said Land Office prior to May 23, 1898. Where the law under which such settlement, pre-emption or purchase was made, is complied with and patent could legally issue thereto, had it not been for the decision of the Supreme Court of the State of Texas, in the case of Hogue vs. Baker, rendered on May 23, 1898.

Sec. 5. Whenever any of the lands described in this Act, or any of the other public lands of this State held or awarded by any fund, or any lands in which the State, or any such funds have an interest, are held, occupied or claimed by any person, association or corporation adversely to the State or such fund, it shall be the duty of the Attorney-General to institute suit therefor, together with rent thereon, for any damages thereto, and for the purpose of any such suits for such land, or affecting the title thereto, or right growing out of the same, the venue thereof is hereby fixed in Travis county, Texas, concurrently with

the county of defendant's residence, and the courts of said county shall have the same jurisdiction over the defendants and the subject matter of the same as if such defendants resided in, and such property was situated in said county.

Sec. 6. The fact that the title of a large number of citizens of this State to their lands are clouded by the controversy between the State and the school fund, and that said school fund is not getting the benefit it is entitled to out of its part of the said land, create an imperative public necessity and emergency for the suspension of the constitutional rule requiring bills to be read on three several days; therefore, such rule is hereby suspended, and this act shall go into effect from and after its passage, and it is so enacted.

#### BILLS AND RESOLUTIONS.

By Senator Morriss:

Senate bill No. 3, A bill to be entitled "An Act to fix the salaries of the superintendents of the several insane asylums of this State, and to make an additional appropriation therefor."

Read first time, and referred to the Committee on Asylums.

By Senator Miller:

Resolved, That the Hon. Barnett Gibbs, a distinguished citizen of Texas and a former presiding officer of this body, be invited to a seat in the bar of the Senate.

Resolution read a second time, and adopted.

#### REGULAR ORDER.

The Chair laid before the Senate, on its third reading and final passage,

Senate bill No. 1, A bill to be entitled "An Act to appropriate sixty thousand dollars to pay members' mileage and per diem, and officers' and employes' per diem of the First Called Session of the Twenty-sixth Legislature."

The Senate having previously passed the House bill on the same subject (see Journal, January 25), on motion of Senator Patterson further consideration of the Senate bill was indefinitely postponed.

There being no further business before the Senate, on motion of Senator Kerr the Senate adjourned until 10 o'clock tomorrow.

#### FIFTH DAY.

Senate Chamber,

Austin, Tex., Tuesday, Jan. 30, 1900.

The Senate met pursuant to adjournment.

3—Senate

President Pro Tem. Turney in the chair.

Roll called. Quorum present, the following Senators answering to their names:

Atlee.	Miller.
Burns.	Morriss.
Dibrell.	Odell.
Goss.	Patterson.
Gough.	Potter.
Greer.	Sebastian.
Grinnan.	Stafford.
Hanger.	Turney.
James.	Wayland.
Kerr.	Yantis.
Lewis.	Yett.
Lloyd.	

Absent.

Davidson.	McGee.
Johnson.	Neal.
Linn.	Ross.

Prayer by the Chaplain, Rev. Garrett.  
Pending the reading of the Journal of yesterday,

Senator Patterson moved that the same be dispensed with.

Lost.

The Secretary then read the Journal of yesterday.

#### EXCUSED.

On motion of Senator Patterson, Senator Greer was excused for non-attendance upon the Senate yesterday on account of important business.

On motion of Senator Hanger, Senator Lloyd was excused for non-attendance upon the Senate yesterday on account of important business.

On Motion of Senator Burns, Journal Clerk W. B. O'Quinn was excused for yesterday and today on account of sickness in his family.

#### COMMITTEE REPORTS.

Austin, Texas, January 30, 1900.

Hon. W. W. Turney, President Pro Tem. of the Senate.

SIR: Your Committee on State Asylums, to whom was referred

Senate bill No. 3, being a bill to be entitled "An Act to fix the salaries of the superintendents of the several insane asylums of this State, and to make an appropriation therefor,"

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass.

Floor report—Morriss, James, Sebastian, Yett and Gough.

MORRISS, Chairman.